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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,853	12/31/2001	James Thomas Cook	209593-81522	5316

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EXAMINER

HOOK, JAMES F

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,853

Applicant(s)

COOK ET AL.

Examiner

James F. Hook

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-20 is/are pending in the application.
- 4a) Of the above claim(s) 14-19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

As set forth in the action of October 3, 2003, an election was required, since this is continuing application and no attempt has been made to switch inventions, the election of group I in the paper of October 20, 2003 still holds, and the following action is made on elected claims 1-4 and 6-13, along with new claim 20 which would also be included in the subject matter of group I.

Claim Rejections - 35 USC § 112

The rejection under new matter from the previous office action has been overcome by the amendment filed on October 12, 2004, and such rejection is hereby vacated.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7, and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosencrans in view of Lalikos. The patent to Rosencrans discloses the recited hose for transmitting liquids comprising an inner tubular portion 40 made of a chlorinated polyethylene polymer (CPE), a ply of braided reinforcement 42 which can be a metal wire, a thin layer 44 which can be made of similar or the same CPE material as the inner layer which is a known elastomeric material, a layer 46 also braided which can be made of polyester

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yarn, and an outer layer 48, plasticizers can be provided which include blends of polymeric material and esters, stabilizers can be provided including blends of metal oxides and known materials which are considered silicates such as clays, the layers are cross linked by a vulcanization process using peroxide to cure it, quinoline is used as an additive also and is considered to be the equivalent of what the applicant is claiming, and there can be other cross linking agents provided along with the peroxide. The patent to Rosecrans discloses all of the recited structure with the exception of forming the outer layer 48 of a dye containing urethane, but rather forms the layer of an elastomeric material with an added reinforcement layer 50 to protect it, and stating the amount of CPE used can be less than 30% by weight, however, such is considered to be merely a choice of mechanical expedients where the specification fails to disclose any criticality to the newly set limit of less than 30%, where the teaching in Rosecrans of 30% suggests such is a known amount used, therefore such is considered to be merely a choice of mechanical expedients where it would have been obvious to one skilled in the art to use routine skill and experimentation to arrive at optimum values of CPE to be used. "Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 CCPA 1955) (Claimed process which was performed at a temperature between 40°C and 80°C and an acid concentration between 25% and 70% was held to be prima facie obvious over a reference process which differed from the claims only in that the reference process was performed at a

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temperature of 100°C and an acid concentration of 10%.); see also Peterson, 315 F.3d at 1330, 65 USPQ2d at 1382 ("The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages."); it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). The patent to Lalikos discloses the recited hose for transmitting liquids comprising in inner tubular layer 10, a reinforcement layer 11, a second reinforcement layer 12, a cover layer 13 and 14, where the cover layer can be formed of urethane and can be provided with color which inherently would include a dye to form an outer protective layer that can show wear. It would have been obvious to one skilled in the art to modify the hose in Rosecrans by substituting a urethane outer layer provided with a dye as suggested by Lalikos as such would provide a tough outer layer which would not need an additional reinforcement layer to protect it, and would thereby reduce costs, and where such could be provided with color or dye to help detect wear in the outer sleeve.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosecrans in view of Lalikos as applied to claims 1-4, 6, and 7 above, and further in view of Kemper. The patent to Rosecrans as modified discloses all of the recited structure with the exception of stating what type of metal wire is used for the reinforcement metal ply. The patent to Kemper discloses the recited hose for transmitting liquids comprising an inner tubular portion 22 of CPE, a braided

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reinforcement layer 21, a cover layer 25, another reinforcement layer 23, and an outer layer 26, where the reinforcing layers can be formed of metal wires which can include brass plated steel wires. It would have been obvious to one skilled in the art to modify the metal wire layer in Rosecrans by using any type of metal wire including brass plated steel wires as such are known wires used for reinforcement in multiplayer reinforced hoses for transmission of fluids as suggested by Kemper, where the brass plated steel wire would be resistant to rust and other forms of damage.

Allowable Subject Matter

Claim 20 is allowed.

Response to Arguments

Applicant's arguments filed October 12, 2004 have been fully considered but they are not persuasive. As set forth in the rejection above, applicant's table sets forth a range of values which covers a specific amount of percentages of CPE used which can be as low as 28% but can be as high as 38%, therefore applicant has shown no criticality of any value of CPE other than that within the range taught by the table. The reference to Rosencrans overlaps the amount of CPE used, and the newly set limit of not greater than 30% CPE is not considered a critical number as such was a new limit that is not supported by the specification as a critical value. The fact that the reference teaches a number close to that used would suggest that such a value were within the abilities of the skilled artisan to arrive at a value slightly less as such is an obvious choice of mechanical expedients. Further, as per *In re Aller* set forth above, Aller says that

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when the general working conditions are known, determining the workable ranges is obvious to one of skill in the art. The reference to Rosencrans discloses a particular value that happens to accomplish the goals of the patent, determining what that workable range is, is considered obvious in light of Aller. Determining the optimal range is also obvious, as per *in re Boesch* above.

Conclusion

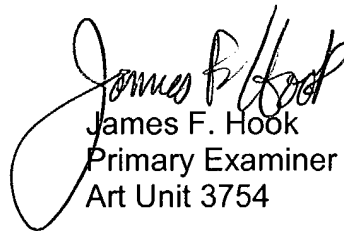
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Shifman, Ozawa, Davis, Leray, Crouse, and Rydell disclosing state of the art hoses.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (703) 308-2913 until November 23, 2004 at which point it will change to (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James F. Hook
Primary Examiner
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JFH